

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Nebraska Public Service)
Commission, on its own motion, seeking to)
establish procedures for the treatment of) Application No. C-3535 / PI – 111
commercial agreements not subject to the)
filing requirements of §252 of the)
Telecommunications Act of 1996.)

COMMENTS OF THE RURAL INDEPENDENT COMPANIES

The Rural Independent Companies (“Companies”)¹ file these Comments in response to the Nebraska Public Service Commission’s (“Commission”) Order entered January 18, 2006 (“Order”). The Order seeks comments from interested parties that will be used in developing a policy and ultimately rules providing guidance regarding the review and approval of agreements between carriers.

Requirements for Filing Agreements Arise From 1996 Telecommunications Act

The requirement to file voluntary agreements between carriers is contained in section 252 of the 1996 Telecommunications Act (“Act”). Section 252(a)(1) states:

Upon receiving a request for interconnection, services, or network elements pursuant to section 251, an incumbent local exchange carrier may negotiate and enter into a binding agreement with the requesting telecommunications carrier or carriers without regard to the standards set forth in subsections (b) and (c) of section 251. The agreement shall include a detailed schedule of itemized charges for interconnection and each service or network element included in the agreement. The agreement, including any interconnection agreement negotiated before February 8, 1996, shall be submitted to the State commission under subsection (e) of this section.

Additionally, section 252(e)(1) of the Act provides:

¹ Arlington Telephone Company, The Blair Telephone Company, Cambridge Telephone Company, Clarks Telecommunications Co., Consolidated Telco, Inc., Consolidated Telecom, Inc., Consolidated Telephone Company, Eastern Nebraska Telephone Company, Great Plains Communications, Inc., Hartington Telecommunications Co., Inc, Hershey Cooperative Telephone Co., K&M Telephone Company, Inc., The Nebraska Central Telephone Company, Northeast Nebraska Telephone Company, Rock County Telephone Company, Stanton Telecom Inc., and Three River Telco.

Any interconnection agreement adopted by negotiation or arbitration shall be submitted for approval to the State commission. A State commission to which an agreement is submitted shall approve or reject the agreement, with written findings as to any deficiencies.

The submission of interconnection agreements is an important component of the Act because disclosure of interconnection agreements is the basis upon which other carriers become aware of the terms and conditions or rates contained in those agreements. Pursuant to the Act, other carriers may adopt existing interconnection agreements. 47 U.S.C. §252(i). See also 47 C.F.R. § 51.809(a). This disclosure process allows competitive carriers to avoid the delay and expense of negotiating new agreements with the incumbent LEC and then awaiting state commission approval. More importantly, without this process, “the nondiscriminatory, pro-competition purpose of section 252(i) would be defeated”²

Historically, the FCC has given a broad construction to Section 252(a)(1) of the Act. The policy for this construction was stated in ¶ 167 of the *Local Competition Order*, where the FCC stated:

. . . requiring filing of all interconnection agreements best promotes Congress’s stated goals of opening up local markets to competition, and permitting interconnection on just, reasonable, and nondiscriminatory terms. State commissions should have the opportunity to review *all* agreements . . . to ensure that such agreements do not discriminate against third parties, and are not contrary to the public interest.³

FCC Orders Provide Guidance Regarding Filing Requirements

In addition to the language of the Act, the FCC has issued orders that provide guidance regarding the identification of agreements requiring state commission filing. First, in 2002, the

² In the Matter of Qwest Corporation Apparent Liability for Forfeiture, Notice of Apparent Liability for Forfeiture (“Qwest Forfeiture Proceeding”), FCC 04-57, Released March 12, 2004 ¶20 quoting *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Report and Order, 11 FCC Rcd 15499, 15583, ¶ 167 (1996) (“*Local Competition Order*”) 11 FCC Rcd at 16141, ¶ 1321.

³ *Id.* at 15583-84, ¶ 167 (emphasis in original).

FCC issued an order in response to a petition for declaratory ruling filed by Qwest.⁴ Second, in 2004, the FCC issued its order in the *Qwest Forfeiture Proceeding*⁵. The *Qwest Forfeiture Proceeding* reaffirmed the findings made in the *Declaratory Ruling*.

The *Declaratory Ruling* provided guidance by stating that any:

. . . agreement that creates an ongoing obligation pertaining to resale, number portability, dialing parity, access to rights-of-way, reciprocal compensation, interconnection, unbundled network elements, or collocation is an interconnection agreement that must be filed pursuant to section 252(a)(1).⁶

The FCC interpretation is consistent with the pro-competitive, deregulatory framework set forth in the Act and recognizes the statutory balance between the rights of competitive LECs to obtain interconnection terms pursuant to section 252(i), and removing unnecessary regulatory impairments to commercial relations between incumbent and competitive LECs. See *Qwest Forfeiture Proceeding* ¶22.

The *Declaratory Ruling* also sets forth some clear exceptions to the above general rule “that any agreement relating to the duties outlined in sections 251(b) and (c) falls within section 252(a)’s filing requirement.” *Qwest Forfeiture Proceeding* ¶23. The FCC found that the following types of agreements would not require filing⁷:

1. Agreements addressing dispute resolution and escalation provisions;
2. Settlement agreements that only provided for backward-looking consideration that do not affect an incumbent LEC’s ongoing obligations relating to section 251;
3. Forms completed by carriers to obtain service pursuant to terms and conditions of an underlying interconnection agreement do not constitute either an amendment to that agreement or a new interconnection agreement; and
4. Agreements with bankrupt competitors that are entered into at the direction of a

⁴ *Qwest Communications International Inc. Petition for Declaratory Ruling on the Scope of the Duty to File and Obtain Prior Approval of Negotiated Contractual Arrangements under Section 252(a)(1)*, WC Docket No. 02-89, Memorandum Opinion and Order, 17 FCC Rcd 19337 (2002) (“*Declaratory Ruling*”).

⁵ See footnote 2.

⁶ *Qwest Forfeiture Proceeding* ¶22 quoting *Declaratory Ruling*, 17 FCC Rcd at 19340-41, ¶ 8.

⁷ *Qwest Forfeiture Proceeding* at ¶23.

bankruptcy court and that do not otherwise change the terms and conditions of the underlying interconnection agreement.

Conclusion

The Act provides explicit requirements and the FCC has provided substantial guidance regarding the filing of agreements between carriers, and this authority must be the basis for any Commission requirements. The Companies support the Commission's decision to provide clarity to the filing requirements and will participate in the development of these rules.

DATED: April 13, 2006.

Respectfully submitted,
THE RURAL INDEPENDENT COMPANIES:

Arlington Telephone Company
The Blair Telephone Company,
Cambridge Telephone Company,
Clarks Telecommunications Co.,
Consolidated Telco, Inc.,
Consolidated Telecom, Inc.
Consolidated Telephone Company
Eastern Nebraska Telephone Company,
Great Plains Communications, Inc.,
Hartington Telecommunications Co., Inc,
Hershey Cooperative Telephone Co.,
K&M Telephone Company, Inc.,
The Nebraska Central Telephone Company,
Northeast Nebraska Telephone Company,
Rock County Telephone Company,
Stanton Telecom Inc., and
Three River Telco

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